1951

File No. 0 Partnership/51

Legal Deptt.
A **BRANCH**

Subject:— Opinions under the Indian Partnership Act, 1932

9/11

File No. 0 Partnership/51

Gen. 194

4.51-A

C O N T E N T S.

Legal Department File No. O.Partnership/1951.

Sr. No.	R.I./	O.No.	Subject	pages
			Opinions under the Indian Partnership Act,1932.	
		4204/14-3-51	Question whether a partner of a firm can effectively bind the firm for future obligations, and can sign final bills on contracts in settlement of the firm's account with Govt. and can give a valid discharge on behalf of the of the firm.	1-4
		9447/15-6-51	Question whether in view of the Industrial Finance Corporation conducted by the Govt. of India, the firm known as Commercial Fiance Corporation can be registered under the Act.	5-8
3.		15977/8-10-51	Sec. 58(3) - Question whether the use of the word"Federal" does not implies sanction approval or patronage of Govt. and would be hit by section 58(3) of the Act.	9-10
4.		19900/11-12-51	Question whether Chit Fund business of the All India Financial Mutual Behefit Society is a lottery.	11-28

M.R.D.
3-6-56
.4

Office of the R.L.A.

The question raised for the R.L.A. consideration is that whether a partner of a firm can effectively bind the firm for future obligations, and can sign final bills on contracts in settlement of the firm's account with Government and can give a valid discharge on behalf of the firm.

2. Section 18 of the Indian Partnership Act provides that subject to the provisions of the Act a partner is the agent of the firmfor the purposes of the business of the firm. Section 19, sub-section(1) provides that subject to the provisions of section 22, the act of a partner which is done to carry on in the usual way, business of the kind carried on by the firm, binds the firm conferred by this section is called his "Implied authority". Under sub-section(2), in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

(a) submit a dispute relating to the business of afirm to arbitration,

(b) open a banking accountxm of a firm in his own name ,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) to admit any liability in a suit or proceeding against the firm,

(f) acquire immoveable property on behalf of a firm,

(g) transfer immoveable property belonging to a firm, or

(h) enter into partnership on behalf of the firm.

P.T.O.

-tion 22 provides that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm. In view of these provisions the signing of final bills by a partner on contracts and settlement of firm's account with Government would be binding on the firm provided it does not involve a compromise or relinquishment of any claim or portion of the firm's claim and he signs on behalf of the firm. The payment to the partner would be a good payment to the firm. The obligations undertaken by him on behalf of the firm would be binding on the firm provided those obligations do not relate to any of the matters specified in clauses(a) to(h) of section 19, sub-section (2). In view of this legal position, the Chief Engineer may decide whether the power exercised by a partner in a particular case o n behalf of the firm is covered by either the express authority or the implied authority of the firm according to the provisions stated above and if that authority is exercised on behalf of the firm by a partner either for future obligations or for settlement of accounts or for the purposes of discharge, it appears, it would not be necessary that he should have been holding a power of attorney on behalf of the other partners of the firm.

Sd/-
14.8

Remembrancer of Legal Affairs.

M.R.D.
22-6-56
C.4

No. 4204
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1). 14th March 1951.

To.

The Chief Engineer,
National Defence Academy Project,
Ketchmer Lines,
Post Box. No.26
Poona No.1.

Subject: Legal Opinion on power of attorney.

Sir,

With reference to the subject noted above, I have the honour to enclose herewith the opinion of the Remembrancer of legal Affairs as desired by you in your letter No.8961/1/E 8 dated the 23rd February 1951.

Yours faithfully,

Sd/-

for Remembrancer of Legal Affair.

M.R.D.
22-6-56
C.4

D.S. (Civil).

The Registrar of Firms has raised the question whether in view of the Industrial Finance Corporation conducted by the Government of India, the firm known as Commercial Finance Corporation can be registered under the Indian Partnership Act. Home Department considers that section 58 sub-section(3) of the Indian Partnership Act would be no bar to the registration of the firm. The R.L.A. is requested to advise.

Sd/- 11-6

M.R.D.
22-6-56
C.4

Office of the R.L.A.

The name"Commercial Finance Corporation" adopted by the partnership firm will not be objectionable under section 58(3) of the Indian Partnership Act, 1932. It is true that under section 11(1) of the Indian Companies Act, 1913, a new company is not permitted to be registered in a name so nearly resembling the name of an existing company as to be calculated to deceive. But that provision of the Indian Companies Act cannot apply to the present case, as the firm is not asking registration under the Indian Companies Act.

Sd/-

14-6

Remembrancer of Legal Affairs.

M.R.D.
22-6-56
C.4

U.R.to H.B. No. 9447,dated the 15th June 1951.

Office of the R.L.A.

Partnership Act, 1932. Sec.58(3).

The use of the word "Federal" does not imply sanction approval of patronage of Government. The firms name known as "Federal Engineering Works of Poona" would not therefefe be hit by section 58(3) of the Indian Partnership Act, 1932.

Sd/-
6-10

Remembrancer of Legal Affairs.

U.R. to H.D.No. 15977 dated the 8th October 1951.

M.R.D.
22-6-56
1.4

Office of the R.L.A.

The Chit Fund business of the all Indian Financial Mutual Benefit Society, not being a lottery does not appear to be opposed to public policy. It appears that there would be no legal objection to the Society being registered as a partnership firm under section 58(i) of the Indian Partnership Act.

Sd/-
11-12-

Remembrancer of Legal Affairs.

U.R.to H.D. No. 19900 ,dated the 11th December 195

C.4